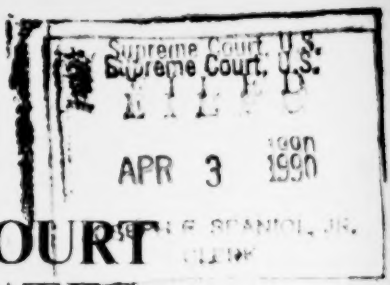
89-1562



No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

HIROTOSHI YAMAMOTO, Plaintiff-Appellant, vs. THRIFT GUARANTY CORPORATION OF HAWAII; HAWAII THRIFT AND LOAN (First Hawaiian Credit Corp. Inc.); BANCORP FINANCE OF HAWAII; SERVCO FINANCIAL CORPORATION GECC FINANCIAL CORP. STATE OF HAWAII, Defendants-Appellees.	Ninth Circuit Court No. 89-15231 Hawaii District Court No. CV-88-0722 HMF

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR CERTIORARI
JURISDICTIONAL STATEMENT

HIROTOSHI YAMAMOTO, pro se
85-175 Farrington Highway, B426
Waianae, Hawaii 96792
Phone: (808) 696-8531
For Plaintiff-Appellant

JURISDICTIONAL STATEMENT

Questions Presented

1. Whether the Appellate Court had erred in accepting the Lower Court's conclusion that the issue of the State's illegal intrusion for subversion of the exclusive jurisdiction of the Federal Courts in all bankruptcy matters is not a substantial Federal Question to be considered.
2. Whether the Appellate Court had erred in condoning the Lower Court's failure to consider newly discovered, prima facie evidence of FRAUD in the engagement of legal counsel for Petitioner.

Special Rule (Rule 28(c)) on Constitutionality of Act 187, Session Laws of Hawaii, 1985

Because the State of Hawaii had demurred as a party to these proceedings on the issue of State Sovereignty, even though the State itself had also been victimized, Petitioner submits that pursuant to 28 U.S.C., § 2403 (b) may be applicable; and accordingly, Certification shall be made to the Attorney General of the State of Hawaii that the constitutionality of Act 187, S.L.H. 1985 shall be drawn into questioning with the consideration of the Federal Question of the "exclusive jurisdiction of the Federal Courts in all bankruptcy matters."

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OPINIONS AND DECISIONS BELOW

February 13, 1989 ORDER GRANTING DEFENDANTS MOTION TO DISMISS (Hawaii District Court – HAROLD M. FONG Exhibit 1, Appendix, pg. 26)

February 14, 1989 JUDGMENT IN A CIVIL CASE IT IS ORDERED AND ADJUDGED THAT THE COMPLAINT IS HEREBY DISMISSED FOR LACK OF JURISDICTION. (Hawaii District Court – HAROLD M. FONG Exhibit 2, Appendix, pg. 31

December 1, 1989 MEMORANDUM – AFFIRMING DISTRICT COURT'S DISMISSAL OF COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION. (Before: SNEED, KOZINSKI and THOMPSON, Circuit Judges) Exhibit 3, Appendix, pg. 32

February 7, 1990 ORDER – The Petition for rehearing is DENIED, and the suggestion for a rehearing en banc is REJECTED. (Before: SNEED, KOZINSKI and THOMPSON, Circuit Judges)
Exhibit - 4, Appendix, pg. 34

February 20, 1990 NOTICE OF APPEAL
Exhibit 5, Appendix, pg. 35

OTHER ORDER and STIPULATION

December 22, 1989 FINAL DECREE CLOSING CASE – (United States Bankruptcy Court, District of Hawaii)
Exhibit 6, Appendix, pg. 37

December 9, 1985 STIPULATION OF DISMISSAL OF APPEAL (United States Court of Appeals for the Ninth Circuit) Exhibit 7, Appendix, pg. 39

CONCISE STATEMENT OF THIS COURT'S JURISDICTION

1. Decemember 1, 1989 – Memorandum Affirming District Court's Dismissal of Complaint for Lack of Subject Matter Jurisdiction. (Exhibit 3, Appendix, pg. 32)

2. February 7, 1990 – ORDER – The Petition for Rehearing is Denied, and the Suggestion for a Rehearing En Banc is Rejected. (Exhibit 4, Appendix, pg. 34)

3. The Statutory Provisions, 28 U.S.C. § 2101 (c), is believed to confer on this Court jurisdiction to review the Judgment and Decree in question by Writ of Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED IN CASE

1. In *Moses Taylor,* 71 U. S. (4 Wall.) 478 (1967), it was established that beginning with the First Judiciary Act enacted by Congress in 1789, in *certain instances* the jurisdiction of the Federal Courts shall be exclusive of the several states.
2. Clarification of the "certain instances" was made in *Dowd Box Company v. Courtney,* 368 U. S. 502 (1962), where Justice Steward delcared:

> This Court's approach to the question of whether Congress has ousted State Courts of jurisdiction was enunciated by Mr. Justice Bradley in *Claflin v. Houseman* (citation omitted) and has remained unmodified through the years. 'The general question, whether State courts can exercise concurrent jurisdiction with the Federal courts in cases arising under the Constitution, laws, and treaties of the United States, has been elaborately discussed . . . (and) the result of these discussions has in our judgment been . . . to affirm the jurisdiction, where it is not excluded by express provision, or arising from the nature of the particular case."

Id. at 508.

3. Bankruptcy is one of the specific cases where Congress has made federal jurisdiction exclusive. Under 28 U. S. C. §1334 (West Supp. 1984), it provides:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy. (underscore supplied).

Also, under Article I, Sec. 8, cl. 4 of the United States Constitution, Congress was given the power "to establish uniform laws on the subject of Bankruptcies throughout the United States."

4. In compliance with the above mandate, Congress enacted the Bankruptcy Reform Act of 1978, as amended, Pub. L. No. 95-598 ("Bankruptcy Code") and the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353.
5. In *Kalb v. Feuerstein*, 308 U. S. 433 (1940), protection is extended to the person and property of a debtor whom the bankruptcy law protects.

The Supreme Court stated:

> It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But, Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally. (footnote omitted.)

Id. at 438-39.

In absolute and unequivocal finality on the subject, the Court continued by stating that:

> The States cannot, in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land. The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Con gress can limit the jurisdiction which courts, State or Federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. (Underscore supplied.)

Id. at 419

CONCISE STATEMENT OF THE CASE

1. Petitioner contends a patent unwarranted, unconscionable, and judicially untenable abridgement and transgression of his rights protected by the Constitution, as well as the statutory provisions relative to all bankruptcy matters.
2. The lower court's denial of jurisdiction was made in spite of its open and unqualified acknowledgment of the "exclusive jurisdiction of the Federal Courts in all matters and proceedings in bankruptcy."

   "THE COURT –

   Both defendants, State of Hawaii, Thrift Guaranty Corporation have not denied the ruling case law as to the exclusive jurisdiction of the federal district court in all matters and proceedings in bankruptcy." (RT pg. 24, lines 9 to 13)
3. The lower court however made a tacit conclusion of law that the Act 187, S.L.H. 1985 does not violate the case ruling of the "exclusive jurisdiction" of the federal courts.

   "Plaintiff further alleges that

   Act 187, S.L.H. 1985 or also known as the Dods Plan is an affront to the 5th and 14th Amendments to the United States Constitution with the provision for the confiscation of the assets from the Estate of Manoa Finance Company to repay Thrift Guaranty's prior debts to the State of Hawaii, and thus denying Plaintiff of the residual equity in the Estate.

   Complaint at 26. The court finds these allegations so insubstantial as not to provide the court with federal question jurisdiction pursuant to 28 U.S.C. § 1331." (See Exhibit - 1, Appendix, pg. 26)
4. In affirming the decision of the district court, the Appellate Judges tacitly ruled as inconsequential the newly discovered evidence of FRAUD in the engagement of legal counsel for Plaintiff.

   "Hirotoshi Yamamoto alleged in his complaint that

the defendants fraudulently subverted the bankruptcy proceedings of Manoa Finance Company, Inc. and thereby caused him to suffer damages. The district court dismissed the complaint for a variety of reasons, one of which was the lack of subject matter jurisdiction. Yamamoto appeals. We affirm." (See Exhibit 3 - Appendix, pg. 32)

SUBSTANTIALITY OF QUESTIONS PRESENTED AS TO REQUIRE FULL PLENARY CONSIDERATION

1. The Question Presented – whether Act 187, S.L.H. 1985 was an intrusion for subversion of the Federal bankruptcy laws by Defendant, State of Hawaii, has now been decided by the lower court and affirmed by the Appellate Court, to be so inconsequential as not to present a Federal Question for adjudication.
2. The Question Presented of the fraudulent usurpation and misrepresentation by Arnold Quittner that he was the "attorney for Yamamoto" had been relegated by the lower court, and affirmed by the Appellate Court to oblivion as being so innocuous as not to merit any judicial review or consideration for proper and just adjudication.

   Arnold Quittner had a definite conflict of interest for he was counsel of record for creditor, Thrift Guaranty Corporation of Hawaii.

   Yamamoto, as the Petitioner for Chapter 11, signed the forms in blank as presented to him by his own legal counsel, Dan Ukishima whose betrayal was uncovered with Quittner's FRAUD. Yamamoto did not know of, nor had he engaged Quittner as his attorney for Chapter 11 protection for his defunct MFC.
3. Clearly the Appeals Court has sanctioned a blatant departure from the accepted and usual judicial proceedings in the consideration by any lower court of the

gravamen of the case, which is a prima facie Federal Question of FRAUD in the engagement of legal counsel for Petitioner in the Chapter 11 proceedings of Manoa Finance Company. The lower court ignored and did not address to the issue of the allegation of FRAUD. Such a departure calls for an exercise of this Court's power of supervision.

4. The Federal Court of Appeals has decided a Federal Question on Bankruptcy Law in a way in conflict with the applicable decisions of this Court.
5. The important question whether Act 187, S.L.H. 1985 had violated the Federal Bankruptcy Laws has not been, but should be settled by this Court.
6. It is true that the same constitutional questions have been previously raised on appeal of Trustee's Reorganization Plan based on Act 187, S.L.H. 1985. However that appeal was aborted by Petitioner due to public media pressure, duress, coercion, threats by Defendants, and by the abandonment of his appeal by his own legal counsel. (See Exhibit 7, Appendix, pg. 39) Furthermore, Petitioner's reservations of his right to sue others under his Stipulation of Dismissal of Appeal (Exhibit 7) will now include suing his own legal counsel for the recently discovered betrayal and collusion with Arnold Quittner, counsel for Defendants, in the subversion of Petitioner's legal representation at the very onset of the Chapter 11 proceedings for Manoa Finance Co.

   Res Judicata cannot be raised by Defendants, for equity consideration of this dogma must be made by a movant with "Clean Hands", of which Defendants are found to be sorely lacking.
7. The constitutionality of Act 187, S.L.H. 1985 has never been decided heretofore, nor can it be supported by any affirmative case rulings by this Court.
8. However in the case at hand, the lower court, as affirmed by the Federal Appeals court, has now tacitly decided and ruled that Act 187, S.L.H. 1985 does not violate the exclusive jurisdiction and other precepts and guarantees of the Bankruptcy Law.

9. The stage is now set for this Court to make its final adjudication on Act 187, S.L.H. 1985 on the Petitioner's Petition for a Writ of Certiorari.

ARGUMENT

1. Protection of the Debtor, who is invariably beleaguered by avid, vociferous, and merciless Creditors, has been one of our traditional guarantees; as many of the early settlers were parolees from the horrors of Debtors' Prisons in the old countries.
2. To insure that this protection is extended uniformly and not denied by being mired in the provincial mismatch of political autonomy with economic power in the service of justice, Congress has vested the restrictive, inviolate jurisdiction of all bankruptcy matters and proceedings exclusively with the Federal Courts. And accordingly, this Court has become the ultimate guarantor for debtors who seek its protective refuge.
3. Challenges to this Constitutional protection granted to debtors have been attempted over the years under various pretenses of state sovereignty rights; which challenges have been denied by this Court without exception. The case at bar should be no exception, especially with its newly discovered, prima facie evidence of FRAUD at the very onset of the Chapter 11 proceedings for the defunct Manoa Finance Co. The obvious intent of the FRAUD was to confiscate for a creditor, Thrift Guaranty Corporation, the residual equity of the Estate of MFC, which residual equity rightfully belongs to Yamamoto, the prime beneficiary, according to the Order of Distribution of the Bankruptcy Laws.

   In Moses Taylor, 71 U.S. (4 Wall), 478 (1967), it was established that beginning with the First Judiciary Act enacted by Congress in 1789, in certain instances the

jurisdiction of the Federal Courts shall be exclusive of the several states.

In Dowd Box Company v. Courtney, 368 U.S. 502 (1962) Justice Steward made unequivocal clarification of the "certain instances".

In Kalb v. Feuerstein, 308 U.S., 433 (1940), this Court has affirmed its power over the subject of bankruptcy as plenary and would "render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally." Id. at 438-39.

In McVey Trucking Co. Inc. v. Secretary of State of Illinois, CA 7, 812 F2d. 311, 55 L.W. 3470, the decision of the Court was:

> Neither Eleventh Amendment nor State sovereign immunity precludes Congress, in exercise of its plenary power under Bankruptcy Clause, from creating cause of action in money damages against states that is enforceable in federal court.

In U.S. v. Union Gas Co. No. 85-1177, CA 3, 11/3/77, a remanded case, the final decision was:

> A constitutional grant of plenary authority to Congress, when stated with unmistakenable clarity, as here, is sufficient to support legislation that subjects the states to suit in federal court. . . . . .
>
> Congress possessed power to abrogate the Eleventh Amendment.

In Muth v. Central Buck School District No. 86-1605, CA 3, 1/29/88 the decision of the Court was:

> Section 5 of the Fourteenth Amendment authorizes Congress to enforce the provisions of that amendment by appropriate legislation.
>
> Utilizing the authority, Congress may abrogate the immunity from federal court suits bestowed on states by the Eleventh Amendment.

5. Because this is a struggle of one man against the power

and influence of an entrenched political machine which has tacitly designated him as the "sacrificial lamb" to succor a debt-ridden State-sponsored, private corporation, this case should not be allowed to fall between the cracks and not be heard. Petitioner had been denied proper legal representation by his own legal counsel who had betrayed him and abandoned his cause.

6. In a well-orchestrated conspiracy, Manoa Finance's Chapter 11 proceedings were subverted at the very onset by Defendants' imported bankruptcy expert who had inveigled the Bankruptcy Court Clerk to accept and record his double filing of Manoa Finance's Chapter 11 Petition. One filing had no attorney's signature. This was the circulated copy (Exhibit - 8, Appendix, page 41). The second copy filed had the signature of Arnold Quittner, as attorney for Petitioner, Yamamoto. Quittner was the counsel of record for Defendant, Thrift Guaranty Corporation of Hawaii, a creditor no less. He was never engaged by Yamamoto as his attorney nor as the attorney for Manoa Finance Company, which had Dan Ukishima on retainer (Exhibit - 9, Appendix, pg. 42).
7. Although the fraudulent duplicity was a matter of public record, the suggestive argument that Petitioner could or should have discovered it earlier is negated by the following considerations.

   (1) There is an ostensible newly discovered evidence of betrayal by Dan Ukishima, Yamamoto's erstwhile legal counsel.

   (2) The acceptance and double filing of an instrument, one without signature of legal counsel, and the other with an unauthorized signature, is unprecedented and clearly indicative of inveiglement or of collusion, as the proper signature on any instrument is always checked before filing, as the first order in the Clerk's acceptance of an instrument. And never a double concurrent filing of the same instrument.

   (3) The discovery of the FRAUD was made by Investigative Auditor, Alfred Au, CPA, on or about June

26, 1987. For full details see APPELLANT'S PETITION FOR REHEARING WITH SUGGESTION FOR EN BANC CONSIDERATION. (Record on Appeal)

8. Our adversarial legal system cannot countenance any usurpation and misrepresentation as counsel for another without his knowledge, consent, or engagement, and especially where there is a patent conflict of interest and fraudulent conspiratorial intent.
9. Nor can our system accept the betrayal by one's own legal counsel or the inveiglement of the Filing Clerk for legal documents.
10. Bankruptcy expert, Arnold Quittner, immediately exploited his fraudulently acquired pseudo status as "attorney" for Petitioner Yamamoto, by filing an affidavit in Bankruptcy Court, declaring Thrift Guaranty Corporation to be the "parent" of Manoa Finance Company on the flimsy fact that Thrift Guaranty Corporation was holding the common stock of MFC, as collateral for the $1million loan which had been subsequently paid in full plus interest. Thrift Guaranty fraudulently became the heir to the Estate of MFC. (See Exhibit 7, Appendix pg. 39)
11. To insure the divestment of Yamamoto of any further standing in MFC's Chapter 11 proceedings, Quittner had Charles Klenske appointed as Trustee to insure the acquisition of the assets of MFC by Thrift Guaranty Corporation.
12. The rest is history. Act 187, S.L.H. 1985 and the Trustee's Reorganization Plan were meant to be the coup d'etat for Yamamoto's multi-million dollars residual equity interest in the Estate of Manoa Finance Company.

Every intention, precept of reorganization for the protection of the debtor-in-possession, the resuscitation and salvaging of any residual equity interest for the legitimate owners, as contemplated by Bankruptcy Laws, have been completely overturned and made a mockery. (See Exhibit - 6, Appendix pg. 37)

Quittner's fraud, with the betrayal of Dan Ukishima, have made the illegal confiscation of the Estate

of Manoa Finance Company an irreversible reality with recourse only to be had in damages for tort. To add insult to injury, all this was done with the trappings of legally documented and approved Orders of the Bankruptcy Judge, S. King.

13. A succinct restatement of the original Questions Presented would be:

(a) Whether Act 187, S.L.H. 1985 is unconstitutional because of its breach of the Bankruptcy Law.

(b) Whether Defendants were tortfeasors in the fraudulent subversion of the Chapter 11 proceedings of Manoa Finance Co.

We pray that this Court will find in the affirmative.

14. The specific provisions deemed unconstitutional are:

(a) Section 7, of Act 187, S.L.H. 1985 which provides for a commingling of Manoa Finance Company's assets for the repayment of Thrift Guaranty's prior loans from the State of Hawaii for 1977 to 1983. (See Exhibit 10 - , Appendix, pg. 49)

(b) Trustee Klenske's Plan of Reorganization Item C - 3, Securities of MFC. "As of the Effective Date, the outstanding Common and preferred stock of MFC shall be cancelled." (See Exhibit 11 - Appendix pg. 55. See also Appendix pg. 57, 58.)

(c) The above provisions are breaches of the Bankruptcy Laws which provided that the residual assets shall be returned to the equity holders according to the order of distribution. And not to any creditor favored by the State of Hawaii.

15. In addition to the illegal confiscation of the assets of the Estate of Manoa Finance Company, Defendant State of Hawaii used State Courts to convict and imprison Yamamoto, on October 29, 1986, on one count out of eleven, for an alleged "misapplication of funds" when he

directed subsidiary, National Braemar, Inc. to release its master lease at cost ($10,000.) in order to consummate a transaction which enabled Manoa Finance Company, its parent, to realize a capital input of $500,000.00 to bolster its sagging debt to capital ratio.

(1) The conviction and imprisonment of Yamamoto definitely involves a "matter in bankruptcy", which as stipulated by Defendants, such a matter remains the "exclusive jurisdiction of the Federal Courts." In addition the conviction was a defiant contravention of an already made decision of the Federal Grand Jury, NOT TO INDICT Yamamoto on January 26, 1984, more than 2-1/2 years prior.

(2) The National Braemar transaction occurred in 1982, before the State of Hawaii exercised its option to close MFC by revoking its industrial loan license. The transaction was proctored by Alfred Au, CPA, who considered the Yamamoto decision well within the exercise of executive discretion and judgment call of Yamamoto to make.

(3) In the State of Hawaii criminal trial of Yamamoto, Au was subpoenaed to testify for the State. However, he was never called to testify – a fact which the State had boasted as "trial strategy", with intent to encumber Au from becoming a witness for Yamamoto; because Au's testimony would have cleared Yamamoto, as Au's testimony did before the Federal Grand Jury. Defendant State of Hawaii had resorted to the exclusion of exculpatory testimony and evidences in order to secure a conviction of Yamamoto.

(4) Further measures to buttress its assurance of Yamamoto's conviction, Defendant State of Hawaii preempted the independent, elected Public Prosecutor to take on the case against Yamamoto. This was a definite unfair and despicable conflict of interest; as Yamamoto had challenged the State's Act 187, S.L.H. 1985 in his aborted appeal of the Trustee's pseudo reorganizational plan. In addition to the exclusion of exculpatory testimony and evidences, Defendant State of Hawaii

used an imported out-of-state, non-CPA as its expert witness, in direct contravention of the State's statutory provisions for industrial loan companies which provisions require only CPA's to certify to their operations.

(5) Legal counsels employed by Yamamoto in his defense were intimidated by media pressures and the political and economic power exercised by Defendants. Only token defenses were mounted on his behalf, with the trial counsel insisting on Yamamoto accepting "plea bargaining" by admitting guilt. His counsel on appeal did no better by not appearing personally for oral arguments before the Supreme Court of the State of Hawaii; as he had promised and assured Yamamoto that he would.

(6) Yamamoto's alleged "misapplication of funds" was actually his recovery of his costs of improvements involved in the transaction of $118,000.00. He has been ordered to make restitution of $50.00 a month to the Estate of Manoa Finance; which Estate has been fraudulently subverted to Thrift Guaranty Corporation, a private corporation, which was only a Creditor of Manoa Finance Company and which was fully paid for its $1million loan plus interest. Yamamoto has served his time in prison, and is currently fulfilling his 2,000 hours in community service at the Rehab Center of the Pacific, besides paying "restitution" to Thrift Guaranty Corporation – which "restitution" under Bankruptcy Law would have been to himself as the residual equity holder of the Estate. (See Exhibit 6, Appendix, pg. 37)

16. The breach, by any State, of the exclusive jurisdiction of the Federal courts in all matters and proceedings in bankruptcy is, ipso facto, a Federal Question requiring adjudication in Federal Courts for its unconstitutionality.
17. Where said breach is the result also of an illegal intrusion for the fraudulent subversion of the Bankruptcy Laws, the breach of constitutionality is compounded two-fold.
18. Where there are incontrovertible facts supporting the Questions Presented, as in the case at hand, the Writ of

Certiorari is not only suggestive, but mandatory.

19. The lower court has been patently callous, and the Appeals Court has been equally remiss in their assessment, consideration, and evaluation of the pertinent facts supported by documented evidence of FRAUD in the case at bar.

CONCLUSION

Clearly the breach of the Bankruptcy Laws by Act 187, S.L.H. 1985 must be declared as unconstitutional.

Defendants' fraudulent subversion of the Chapter 11 proceedings of Manoa Finance Company has unmistakenly denied Plaintiff of his Constitutional rights to "due process of law" guaranteed by the Fifth and Fourteenth Amendments to the Constitution.

Accordingly, Defendants must be adjudged to be tortfeasors. Plaintiff should be awarded the damages he has prayed for of $29,479,339.00 as stated in his Reply Brief in the Record of Appeal.

Furthermore, the case should be remanded back to the lower court for the satisfaction of judgment.

DATED: Honolulu, Hawaii, March 22, 1990.

HIROTOSHI YAMAMOTO,
pro se for Plaintiff-Appellant

IN THE SUPREME COURT
OF THE UNITED STATES

No. _____

YAMAMOTO v. THRIFT
GUARANTY CORPORATION
ET AL. and STATE OF HAWAII

NOTICE OF CERTIFICATION OF ACT 187
S.L.H. 1985 FOR CONSIDERATION

To the Attorney General of
The State of Hawaii

Please take Notice that pursuant to 28 U.S.C. § 2403 (b) may be applicable.

Accordingly, the Constitutionality of Act 187, S.L.H. 1985 shall be drawn into consideration.

DATED: Honolulu, Hawaii, March 22, 1990.

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO,
pro se for Plaintiff-Appellant

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
No. 89-15231

YAMAMOTO v. THRIFT GUARANTY
CORPORATION, et al and
STATE OF HAWAII

DESIGNATION FOR CERTIFICATION
OF RECORD ON APPEAL

To: The Clerk of the Above
Entitled Court

Please take Notice that the entire Record together with Transcript shall be Designated as the Record on Appeal to the Supreme Court of the United States.

DATED: Honolulu, Hawaii, March 19, 1990

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO

(CERTIFICATE OF SERVICE ATTACHED)

CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Designation for Certification of Record on Appeal shall be transmitted by the United States Postal Service, postage prepaid to:

JOSEPH T. KEIFER
841 Bishop Street
Honolulu, Hi 96813
Counsel for Thrift Guaranty Corporation, et al.

and

WARREN PRICE III,
Attorney General
State of Hawaii State Capitol
Honolulu, HI 96813
Counsel for State of Hawaii

DATED: Honolulu, Hawaii, March 19, 1990.

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL No. 88-00722

YAMAMOTO v. THRIFT GUARANTY CORPORATION, et al and The STATE OF HAWAII

DESIGNATION FOR CERTIFICATION OF RECORD ON APPEAL

To: The Clerk of the Above Entitled Court

Please take Notice that the entire Record together with Transcript shall be designated as the Record on Appeal to the Supreme Court of the United States.

DATED: Honolulu, Hawaii, March 19, 1990

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO

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JOSEPH T. KEIFER
841 Bishop Street
Honolulu, Hi 96813

Counsel for Thrift Guaranty Corporation, et al.

and

WARREN PRICE III,
Attorney General
State of Hawaii State Capitol
Honolulu, HI 96813

DATED: Honolulu, Hawaii, March 19, 1990.

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

BK No. 83-00065
(Chapter 11)

In RE

MANOA FINANCE COMPANY, INC.
(a Hawaii Corporation)
Debtor

To The Clerk of the Above
Entitled Court

Please take Notice that the entire Record together with Transcript shall be Designated as the Record on Appeal to the Supreme Court of the United States.

DATED: Honolulu, Hawaii, March 19, 1990

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO

(CERTIFICATE OF SERVICE ATTACHED)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Designation for Certification of Record on Appeal shall be transmitted by the United States Postal Service, postage prepaid to:

Ray Almeida, Trustee
Manoa Finance Company, Inc.
2733 East Manoa Road
Honolulu, Hi 96822

DATED: Honolulu, Hawaii, March 19, 1990.

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

CR NO. 85-1536

STATE OF HAWAII
vs.
HIROTOSHI YAMAMOTO
Defendant

DESIGNATION FOR
CERTIFICATION OF
RECORD ON APPEAL

To: The Clerk of the Above
Entitled Court

Please take Notice that the entire Record together with Transcript shall be Designated as the Record on Appeal to the Supreme Court of the United States.

DATED: Honolulu, Hawaii, March 19, 1990

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO

(CERTIFICATE OF SERVICE ATTACHED)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Designation for Certification of Record on Appeal shall be transmitted by the United States Postal Service, postage prepaid to:

LAWRENCE A. GOYA
Deputy Attorney General
State of Hawaii
426 Queen Street, Room 201
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, March 19, 1990.

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HIROTOSHI YAMAMOTO,	) CIVIL NO. 88-00722
	)
Plaintiff	)
	)
vs.	)
	)
THRIFT GUARANTY CORPORATION OF HAWAII, HAWAII THRIFT AND LOAN First Hawaiian Creditcorp, Inc.), BANCORP FINANCE OF HAWAII, SERVCO FINANCIAL CORPORATION, JOHN and MARY DOES 1-100, DOE PARTNERSHIPS, CORPORATIONS AND OTHER ENTITIES 1-100 and STATE OF HAWAII.	)
	)
Defendants.	)
	)

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 13 1989

at 3 o'clock and 15 min. P M.
WALTER A.Y.H. CHINN, CLERK

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

Plaintiff's Motion for Summary Judgment and Defendants Thrift Guaranty Corporation of Hawaii, First Hawaiian Creditcorp, Inc., Bancorp Finance of Hawaii, Inc., Servco Financial Corporation, Inc., GECC Financial Corporations' Motion to Dismiss, or Alternatively, for Summary Judgment and/or Judgment on the Pleadings came on for hearing before this court on December 28, 1988. Defendant State of Hawaii joined in the other defendants' motion. Plaintiff Hirotoshi Yamamoto appeared pro se, Paul T. Tsukiyama appeared on behalf of defendant

State of Hawaii, and Joseph T. Kiefer appeared on behalf of the remaining defendants. The court, having reviewed the motion and the memoranda in support thereof and in opposition thereto, having heard the oral arguments of counsel and plaintiff, and being fully advised as to the premises herein, finds as follows:

BACKGROUND

On September 29, 1988, plaintiff filed his complaint in this action. In his lengthy complaint, plaintiff alleges, in essence, that defendants fraudulently subverted the Manoa Finance Company, Inc.'s ("MFC") bankruptcy proceedings.

Plaintiff was the sole shareholder of Manoa Enterprises, Inc., which held all of the common stock of MFC, when a voluntary Chapter 11 petition was filed in the MFC Bankruptcy Case on February 10, 1983. Plaintiff objected to the trustee's plan of reorganization in the bankruptcy case: plaintiff argued that MFC was not insolvent, that the MFC Plan unfairly enriched Thrift Guaranty Corporation of Hawaii, and that the MFC Plan improperly deprived plaintiff of his interest as a stockholder of MFC. On October 2, 1985, the United States Bankruptcy Court confirmed a plan of reorganization notwithstanding plaintiff's objections. Plaintiff appealed the order to the Court of Appeals for the Ninth Circuit but later dismissed the appeal by stipulation. Plaintiff then filed this action. Plaintiff asserts that the court has jurisdiction under 28 U.S.S. §§ 1331 and 1343.

Plaintiff filed a motion for summary judgment. Defendants filed a motion to dismiss or alternatively, for summary judgment and/or judgment on the pleadings. In their motion, defendants argue (1) that the court lacks subject matter jurisdiction over the claims for relief alleged against them in the complaint; (2) that the claims for relief in the complaint are barred by the doctrine of res judicata; and/or (3) that the complaint fails to state a claim upon which relief may be granted. Defendant State of Hawaii joins in defendants' motion to dismiss and filed a separate

motion arguing (1) that the claim against the State of Hawaii is barred by the eleventh amendment to the Constitution of the United States and (2) that plaintiff's claims are barred by the statute of limitations.

DISCUSSION

Motion to Dismiss

Defendants bring their motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Rule 12(b) of the Federal Rules of Civil Procedure provides in part as follows:

> Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter....

It is well settled that court must exercise jurisdiction over a suit brought pursuant to the Constitution of laws of the United States unless the alleged claim is made "solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." Bell v. Hood, 327 U.S. 678, 682-83, 66 S. Ct. 773, 776 (1946).

The complaint asserts that

> Jurisdiction of the District Court is invoked under 28 U.S.C. § 1331 for the Constitutional issue of the 14th Amendment and the Federal question of the intrusion upon and the subversion of the Bankruptcy proceedings, over which the Federal Courts have exclusive jurisdiction. Also 28 U.S.C. § 1343 gives the District Court original jurisdiction of any Civil Action authorixed [sic] by law.

Plaintiff alleges that the court has jurisdiction pursuant to 28 U.S.C. § 1331. 28 U.S.C. § 1331 does not create federal jurisdiction; it confers jurisdiction where a federal question is otherwise at issue. Ellis V. Cassidy, 625 F.2d 227, 229 (9th Cir. 1980). Plaintiff refers to federal questions in his

complaint as follows: Plaintiff alleges that the bankruptcy proceedings to which plaintiff objects deprived plaintiff of "his constitutional rights to enjoy the massive residual assets of the estate of his defunct MFC." Complaint at 17. Plaintiff further alleges that

> Act 187, S.L.H. 1985 or also known as the Dods Plan is an affront to the 5th and 14th Amendments to the United States Constitution with its provision for the confiscation of the assets from the Estate of Manoa Finance Company to repay Thrift Guaranty's prior debts to the State of Hawaii, and thus denying Plaintiff of his residual equity in the Estate.

Complaint at 26. The court finds these allegations so insubstantial as not to provide the court with federal question jurisdiction pursuant to 28 U.S.C. § 1331.

Plaintiff alleges that the court has jurisdiction pursuant to 28 U.S.C. § 1343. 28 U.S.C. § 1343 does not create an independent basis for federal jurisdiction; it confers jurisdiction for alleged violations of one of the substantive sections of the Civil Rights Act. Ellis v. Cassidy, 625 F.2d 227, 229 (9th Cir. 1980). The complaint does not allege that defendants violated any of the substantive sections of the Civil Rights Act. Thus, the court has no jurisdiction pursuant to 28 U.S.C. § 1343.

Accordingly, the court finds that it lacks subject matter jurisdiction over the complaint and must DISMISS plaintiff's complaint.

The court notes that even if it did have subject matter jurisdiction over plaintiff's complaint, plaintiff's complaint is barred by the doctrine of res judicata. Plaintiff appeared in the MFC Bankruptcy Case, and litigated and lost the very issues he alleges in this action. Under the doctrine of res judicata, plaintiff is barred from raising those issues in this proceeding. See generally, Ellis v. Cassidy, 625 F.2d 227, 229 (9th Cir., 1980) (appellant barred by doctrine of res judicata from raising issues under the Bankruptcy Act that were raised in previous proceeding).

The court further notes that even if it did have subject matter jurisdiction over plaintiff's complaint, the

insubstantial nature of plaintiff's claims are such that they fail to state a claim upon which relief may be granted and the complaint would have to be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

Finally, the court notes plaintiff's claims against the State of Hawaii are barred by the Eleventh Amendment to the United States Constitution.

Because the court finds that it lacks subject matter jurisdiction over the complaint, the court will not consider plaintiff's motion for summary judgment, and DISMISSES plaintiff's complaint for lack of subject matter jurisdiction.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii. FEB 13 1989

/s/ Harold M. Fong
UNITED STATES
DISTRICT COURT
JUDGE

HIROTOSHI YAMAMOTO vs. THRIFT GUARANTY CORPORATION OF HAWAII, et al.; Civ. No. 88-00722; ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

United States District Court

DISTRICT OF HAWAII

JUDGEMENT IN A
CIVIL CASE

CASE NUMBER:
Civil No. 88-00722 HMF

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 14 1989

at ___ o'clock and ___ min. ___ M.
WALTER A.Y.H. CHINN, CLERK

HIROTOSHI YAMAMOTO
v.
THRIFT GUARANTY
CORPORATION OF HAWAII, et al

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. The action came hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED
That the Complaint is hereby Dismissed for lack of jurisdiction.

February 14, 1989
Date

/s/ Walter A.Y.H. Chinn
Clerk

Exhibit - 2

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

HIROTOSHI YAMAMOTO Plaintiff-Appellant, vs. THRIFT GUARANTY CORPORATION OF HAWAII; HAWAII THRIFT & LOAN (First Hawaiian Credit Corp. Inc.); BANKCORP FINANCE OF HAWAII; SERVCO FINANCIAL CORPORATION; GECC FINANCIAL CORP.; STATE OF HAWAII, Defendants-Appellees.	)	No. 89-15231 D.C. No. CV-88-0722-HMF MEMO-RANDUM*

FILED
DEC 1 1989
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District Court
for the District of Hawaii
Harold M. Fong, Chief District Judge, Presiding

Submitted November 1, 1989**
Honolulu, Hawaii

Filed

Before: SNEED, KOZINSKI and THOMPSON, Circuit Judges.

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for disposition without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

Hirotoshi Yamamoto alleged in his complaint that the defendants fraudulently subverted the bankruptcy court proceedings of Manoa Finance Company, Inc. and thereby caused him to suffer damages. The district court dismissed the complaint for a variety of reasons, one of which was the lack of subject jurisdction. Yamamoto appeals. We affirm.

Yamamoto based his claim to subject matter jurisdiction on 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343 (denial of civil rights). As to the latter, Yamamoto alleged no civil rights violations, and thus his claim of subject matter jurisdiction under section 1343 fails.

As to his claim of federal question jurisdiction under section 1331, Yamamoto alleged that such jurisdiction existed because "of the intrusion upon and the subversion of the Bankruptcy proceedings, over which the Federal Courts have exclusive jurisdiction." He further alleged that as a result of this subversion, the bankruptcy court confirmed a plan of reorganization which caused assets of the debtor Manoa Finance Company, Inc. to be confiscated and deprived Yamamoto of the residual assets of the debtor's estate. Yamamoto made essentially the same claims during the reorganization proceedings. As he did in the district court, Yamamoto asserts that these acts violated his rights under the fifth and fourteenth amendments to the Constitution. We agree with the district court that these allegations are so insubstantial as not to provide the court with federal question jurisdiction under 28 U.S.C. § 1331. See Bell v. Hood, 327 U.S. 678, 682-83.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HIROTOSHI YAMAMOTO	)	No. 89-15231
	)	
Plaintiff-Appellant,	)	D.C. No.
vs.	)	CV-88-0722-HMF
THRIFT GUARANTY CORPORATION OF HAWAII; HAWAII THRIFT & LOAN (First Hawaiian Credit Corp. Inc.); BANKCORP FINANCE OF HAWAII; SERVCO FINANCIAL CORPORATION; GECC FINANCIAL CORP.; STATE OF HAWAII,	)	ORDER
Defendants-Appellees.	)	

FILED
FEB 7 1990
CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

Before: Sneed, Kozinski and Thompson, Circuit Judges

The panel, as constituted above, has unanimously voted to deny the petition for rehearing. Judges Kozinski and Thompson have voted to reject the suggestion for a rehearing en banc, and Judge Sneed so recommended.

The full court has been advised of the suggestion for en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is DENIED, and the suggestion for arehearing en banc is REJECTED.

HIROTOSHI YAMAMOTO, pro se
85-175 Farrington Hwy, B426
Waianae, Hi 96792

FILED
FEB 20 1990
CATHY A. CATTERSON, CLERK

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HIROTOSHI YAMAMOTO	)	No. 89-15231
	)	
Plaintiff-Appellant,	)	D.C. No.
vs.	)	CV-88-0722-
	)	HMF
THRIFT GUARANTY	)	
CORPORATION	)	
OF HAWAII; HAWAII THRIFT &	)	NOTICE
LOAN (First Hawaiian Credit	)	OF APPEAL
Corp. Inc.); BANKCORP FINANCE	)	
OF HAWAII; SERVCO FINANCIAL	)	Certificate
CORP.; STATE OF HAWAII,	)	of Service
	)	
Defendants-Appellees.	)	
	)	

NOTICE OF APPEAL

Notice is hereby given that a Petition for Writ of Certiorari to the United States Supreme Court shall be filed.

DATED: Honolulu, Hawaii, February 15, 1990.

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO,
pro se for Plaintiff-Appellant

CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of the foregoing NOTICE OF APPEAL was transmitted by the United States Postal Service, postage prepaid to:

WARREN PRICE III,
Attorney General
State of Hawaii
State Capitol
Honolulu, HI 96813

and

JOSEPH T. KEIFER
841 Bishop Street
Honolulu, Hi 96813
Counsel for Thrift Guaranty Corporation of Hawaii, et al.

DATED: Honolulu, Hawaii, February 15, 1990.

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

In re	)	
	)	BK No. 83-00065
MANOA FINANCE	)	(Chapter 11)
COMPANY, INC.,	)	
a Hawaii corporation,	)	
	)	
Debtor.	)	
	)	

FINAL DECREE CLOSING CASE

Upon the "Application of Trustee for Final Decree Closing Case" brought by Ray H. Almeida (the "Trustee"), Successor Chapter 11 Trustee of Manoa Finance Company, Inc. ("MFC"); it appearing that the MFC Chapter 11 case has been fully administered, that the plan of reorganization adopted by order entered herein on October 2, 1985 (the "Plan") has been substantially consummated, and that the Trustee properly has performed all of his duties; and in accordance with Bankruptcy Rules 3002 and 5009, and 11 U.S.C. § 350, it is hereby

ORDERED AND DECREED, that

1. Ray H. Almeida is discharged from his duties as Chapter 11 Trustee of MFC.

2. The Trustee's bond is cancelled, and any refund thereunder shall revert to the MFC estate and, to the extent such refund is not applied to the payment of post-Effective Date administrative expenses and professionals' fees, shall be the property of Thrift Guaranty Corporation ("TGC").

3. All cash remaining in the estate after payment of post-Effective Date administrative expenses and professionals' fees, shall be the property of TGC. The Trustee shall pay such expenses and fees within 45 days from the entry of this order, and shall remit the cash balance to TGC.

4. All funds remaining in the Disbursement Account

shall be the property of TGC, and shall be turned over to TGC as soon as it is practicable.

5. The Court confirms that, in accordance with the Plan, all of MFC's right, title and interest in, under and to any and all tangible and intangible real or personal property or other assets of MFC, of any kind or nature, are and have been conveyed and transferred to TGC.

6. The above-captioned Chapter 11 case is hereby closed.

Dated: Honolulu, Hawaii, December 22, 1989.

/s/ Samuel P. King
United States District Judge

BK No. 83-00065
(Chapter 11)
FINAL DECREE CLOSING CASE

Of Counsel:

JONES, DAY, REAVIS & POGUE

JAMES J. FEDER
Suite 3600, One Century Plaza
2029 Century Park East
Los Angeles, California 90067
Telephone: (213) 553-3939

Attorneys for Appellee Charles R. Klenske,
Chapter 11 Trustee

RECEIVED
CATHY A CATTERSON ACTING CLERK
U.S. COURT OF APPEALS
DEC 13 1985
FILED _____ _____
DOCKETED _____ _____
DATE INITIAL

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re	)	CA. No. 85-2692
	)	
MANOA FINANCE	)	DC Hawaii
COMPANY, INC.,	)	CV-83-00065
a Hawaii corporation,	)	
	)	STIPULATION OF
Debtor.	)	DISMISSAL OF APPEAL

STIPULATION OF DISMISSAL OF APPEAL

Appellant Hirotoshi Yamamoto and Appellee Charles R. Klenske, Trustee, hereby stipulate that (1) this appeal, initiated by the Notice of Appeal of Order filed by Appellant on October 11, 1985, shall be dismissed, and (2) each party to this appeal shall bear his own costs, and (3) the dismissal of this appeal by Hirotoshi Yamamoto shall not prevent him from instituting other actions or proceedings against other parties related to or involved with Manoa Finance Company, Inc.

DATED: Honolulu, Hawaii, December 9, 1985.

/s/ Hirotoshi Yamamoto
Hirotoshi Yamamoto,
Pro Se Appellant

/s/ James J. Feder
James J. Feder
Attorney for
Charles R. Klenske,
Trustee Appellee

OF COUNSEL:
MUKAI, ICHIKI, RAFFETTO & MacMILLAN
R. PATRICK JARESS

Name GENDEL, RASKOFF, SHAPIRO & QUITTNER
ARNOLD M. QUITTNER

Address 345 Queen Street, Suite 800

Honolulu, Hawaii 96813

Telephone 531-6277

Attorney for Debtor

(CLERK'S STAMP)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

FEB 10 1983

4 o'clock and 10 min. P.M.
DOROTHY K. IPPONI, Clerk

UNITED STATES BANKRUPTCY COURT FOR THE

HONOLULU DISTRICT OF ~~CALIFORNIA~~ HAWAII

In re

MANOA FINANCE COMPANY, INC.

Debtor

Case No. 83 00065

VOLUNTARY PETITION
CHAPTER 11 REORGANIZATION

TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED COURT:

1. Petitioner's post-office address is 2733 East Manoa Road

Honolulu, Hawaii Zip Code 96822

2. Petitioner has resided (or has had its domicile or has had its principal place of business or if a partnership, or corporation, has had its principal assets) within this district for the preceding 180 days (or for a longer portion of the preceding 180 days than in any other district).

3. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter 11 of Title 11, United States Code as a voluntary debtor.

4. ~~[illegible]~~ -- ~~[illegible]~~ petitioner intends to file a plan pursuant to Chapter 11, Title 11, United States Code.

5. (If petitioner is a corporation) Exhibit "A" is attached to and made part of this petition.

WHEREFORE, your petitioner prays for relief in accordance with Chapter 11 of Title 11, United States Code.

Signed: _____
☒ Attorney for Petitioner ☐ Petitioner
Petitioner signs if not represented by attorney

Address Suite 1748, Pacific Trade Center
190 South King Street
Honolulu, Hawaii 96813

I, HIROTOSHI YAMAMOTO, Director ~~[illegible]~~ and ~~[illegible]~~ the agent of the corporation named as Petitioner or a member or an authorized agent of the partnership named as Petitioner in the foregoing Petition, do hereby declare (or certify, verify or state) under penalty of perjury that the statements contained therein are true and correct, and that the filing of this Petition on behalf of the corporation or partnership has been authorized.

Executed this 10th day of February, 1983 at Honolulu, Hawaii ~~[illegible]~~

ATTEST: A True Copy
DOROTHY K. IPPONI
Clerk of the Bankruptcy Court

Hirotoshi Yamamoto
Petitioner

Unless the petition is accompanied by a ~~[illegible]~~ the debtor's creditors and their addresses, the petition must be accompanied by a schedule of its property, a statement of his affairs, and a statement of executory contracts, pursuant to Rule 1-11. These statements shall be submitted on official forms.

Exhibit - 8

[redacted]

MUKAI, ICHIKI, RAFFETTO & MacMILLAN
R. PATRICK JARESS
Name GENDEL, RASKOFF, SHAPIRO & QUITTNER
ARNOLD M. QUITTNER
Address 345 Queen Street, Suite 800

Honolulu, Hawaii 96813

Telephone 531-6277

Attorney for Debtor

CLERK'S STAMP

FEB 10 ...

FILED ORDERED

at 4 o'clock and 10 min. P.M.

DOROTHY K. [illegible], Clerk

UNITED STATES BANKRUPTCY COURT FOR THE

HONOLULU DISTRICT OF ~~CALIFORNIA~~ HAWAII

In re

MANOA FINANCE COMPANY, INC.

Debtor

Case No. 83 00055

VOLUNTARY PETITION
CHAPTER 11 REORGANIZATION

TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED COURT:

1. Petitioner's post-office address is 2733 East Manoa Road

Honolulu, Hawaii Zip Code 96822

2. Petitioner has resided (or has had his domicile or has had his principal place of business or if a partnership, or corporation, has had its principal assets) within this district for the preceding 180 days (or for a longer portion of the preceding 180 days than in any other district).

3. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter 11 of Title 11, United States Code as a voluntary debtor.

4. ~~A petition or petitions~~ -- ~~No~~ petitioner intends to file a plan pursuant to Chapter 11, Title 11, United States Code.

5. (If petitioner is a corporation) Exhibit "A" is attached to and made part of this petition.

WHEREFORE your petitioner prays relief in accordance with Chapter 11 of Title 11, United States Code.

Signed: [signature]
Attorney for Petitioner
Petitioner signs if not represented by attorney

Address Suite 1748, Pacific Trade Center
190 South King Street
Honolulu, Hawaii 96813

I, HIROTOSHI YAMAMOTO, Director and [redacted]
of the corporation named as Petitioner, or a member or an authorized agent of the partnership named as Petitioner in the foregoing Petition, do hereby execute and certify, verify, or state, under penalty of perjury, that the statements contained therein are true and correct, and that the filing of this Petition on behalf of the corporation or partnership has been authorized.

Executed this 10th day of February, 1983 at Honolulu, Hawaii

[redacted]

[signature]
Debtor

Unless the petition is accompanied by a list of all the debtor's creditors and their addresses, the petition must be accompanied by a schedule of property, a statement of his affairs, and a statement of executory contracts, pursuant to Rule 11-11. These statements must be filed within [illegible]

ATTEST: A true Copy
DOROTHY K. [illegible]
Clerk of the Bankruptcy Court

(To be made one and twelve copies)
THE SENATE
THIRTEENTH LEGISLATURE, 1985
STATE OF HAWAII

S.B. NO. 1198 S.D. 2 H.D. 1 C.D. 1

ACT 187

A BILL FOR AN ACT

RELATING TO THE INDUSTRIAL LOAN COMPANY GUARANTY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to eliminate, upon the occurrence of certain events, the requirement that an industrial loan company pay to Thrift Guaranty Corporation of Hawaii the membership assessments provided in sections 408A-9 and 408A-10, Hawaii Revised Statutes. This Act also authorizes a loan by the State of Hawaii to Thrift Guaranty Corporation of Hawaii in order to permit a prompt payment to account holders of industrial loan companies presently in bankcruptcy.

SECTION 2. Section 408A-5, Hawaii Revised Statutes, is amended to read as follows:

"§408A-5 Voting rights of members [.]; and election of directors. Any other law to the contrary notwithstanding, any action by the members of the guaranty corporation, including the election of a board of directors, shall be taken after a vote of the members in accordance with this section. Each member company shall be entitled to one vote plus an additional vote for each [$1,000 of assessments, rounded to the nearest $1,000, which such member shall have actually paid to the guaranty fund in accordance with section 408A-10; provided that no member shall be entitled to more votes than is represented by

fifteen per cent of the aggregate assessments. For purposes of any actions taken prior to the initial assessment required by section 408A-10(1), including the initial election of the board, voting rights of members shall be calculated as if each member had paid the initial assessment required by section 408A-10(1).] $1,000,000 of the member's outstanding thrift account obligations, rounded to the nearest $1,000,000, but no member shall be entitled to more than one representative on the board of directors of the corporation."

SECTION 3. Section 408A-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Receivers [or], liquidators, or trustees and debtors in possession under the Bankruptcy Code of members shall be entitled to offer the assets of such members for sale to the guaranty corporation or as security for loans from the guaranty corporation. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such members. The guaranty corporation with the approval of the bank examiner may make loans on the security of or may purchase and liquidate or sell any part of the assets of a member which [may hereafter be] has been placed in receivership or [adjudicated bankrupt,] made subject to a case under the Bankruptcy Code, but in any case in which the guaranty corporation is acting as receiver of a member, no such loan or purchase shall be made without the approval of a court of competent jurisdiction"

SECTION 4. Section 408A-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read as follows:

"(a) [When] If a member has [been adjudicated bankrupt] sought relief under the Bankruptcy Code or has been or is in receivership, the bank examiner shall either:

(1) Direct the guaranty corporation to forthwith pay to each thrift account holder of the member up to $10,000 as specified in section 408A-9; or

(2) Withhold any direction to the guaranty corporation until it has been determined that the proceeds of the

receivership or bankruptcy are insufficient to pay up to $10,000 of each thrift account obligation as specified in section 408A-9; upon such determination the bank examiner shall direct the guaranty corporation to pay each such deficiency."

2. Subsection (c) is amended to read as follows:

"(c) Whenever the guaranty corporation makes payments in accordance with section 408A-14(a), it shall be subrogated to all rights of the thrift account holder up to the amount of its payment, and shall be entitled to repayment in full from the estate of the member prior to any distribution to the thrift account holder to whom it has made payment. The guaranty corporation may waive, release, or modify in any way its right to such repayment from the estate of the member with the approval of the bank examiner."

SECTION 5. The sum of $10,500,000, or so much thereof as may be necessary for fiscal years 1985-86 and 1986-87, is appropriated or authorized from the general revenues of the State of Hawaii, or from the issuance of general obligation bonds, or any combination thereof deemed in the best interest of the State. The sums appropriated shall be expended, and the bonds authorized shall be issued by the department of budget and finance for the purposes of this Act.

When requested by the bank examiner, the director of finance shall issue such general obligation bonds as provided by law, the proceeds of which shall be used, together with any general revenues of the State, to make loans to Thrift Guaranty Corporation of Hawaii (the "guaranty corporation"), without interest and to be repaid over a term not to exceed twenty years. The loans may be made, as and when necessary, only to make payments pursuant to a plan of reorganization or liquidation that has been confirmed by the court in the bankruptcy proceedings involving Manoa Finance Company, Inc. ("Manoa Finance"), Great Hawaiian Financial Corporation ("Great Hawaiian"), and Commercial Finance, Limited ("Commercial Finance"); provided that up to $1,000,000 of the amount herein appropriated shall be used only to make payment to thrift account holders of Commercial Finance of up to the guaranty amount provided by section 408A-9, Hawaii

Revised Statutes, should a majority of those account holders so request; and provided further that the bank examiner is satisfied that the following conditions have been met:

(1) Such plan of reorganization or liquidation must provide that:

(A) The amount that each thrift account holder of such member company will receive out of the debtor's estate, when added to any guaranty payments to be made by the guaranty corporation, shall be at least equal to the full guaranty amount required by section 408A-9(a), Hawaii Revised Statutes, less any advance or other payment previously received by such account holder from the guaranty corporation, receiver, trustee in bankruptcy, or debtor in possession; and

(B) Any payments made by the guaranty corporation under the plan of reorganization or liquidation shall be limited to the aggregate of: (i) the amount appropriated under this section; (ii) amounts loaned by member companies specifically for the plan; and (iii) not more than $2,000,000 of other funds belonging to the guaranty corporation.

(2) Such plan must be confirmed within a reasonable time, not to exceed one year following the effective date of this Act, and if any such order of confirmation shall be appealed, such appeal shall have been dismissed not later than sixty days after the end of such one-year period.

(3) Payment to the account holders must commence within a reasonable time, not to exceed ninety days after court confirmation of the plan.

(4) Assets of the guaranty corporation and assets acquired by the guaranty corporation from Manoa Finance or Great Hawaiian shall secure the loans made by the State pursuant to this Act and any loans made by the member companies specifically for the plans of reorganization contemplated by this Act, in the following manner: The bank examiner and the member companies shall mutually designate separate

and identifiable pools of such assets. The State shall have a lien, immediately senior to the lien of the member companies, in one such pool of assets, the fair estimated value of which shall not be less than the amount of loans made by the State pursuant to this Act. The member companies shall have a lien, immediately senior to the lien of the State, in the remaining pool of assets; provided that the pool of assets designated for the member companies shall include, at the minimum, the real estate owned by Manoa Finance. The State and member companies shall each have a junior lien position in the pool of assets in which the other party holds the more senior lien position. If Commercial Finance participates in a plan of reorganization pursuant to this section, the assets of Commercial Finance acquired by the guaranty corporation shall be divided into two pools of assets and shall secure the respective loans of the State and the member companies in the foregoing manner. The guaranty corporation shall sell, collect, or liquidate all assets so acquired and divided as soon as prudently and economically feasible; provided that the terms and conditions of all such sales shall be subject to the prior approval of the bank examiner. The assets of the guaranty corporation not acquired from Manoa Finance and Great Hawaiian shall not be used to pay any of the expenses of such sales, collections, or liquidations; and the net proceeds or recoveries from such sales, collections, or liquidations shall not be used to pay any expenses of the guaranty corporation, except those in connection with such sales, collections, or liquidations. Until substantial completion of the sale, collection, or liquidation of such assets, and based upon the most recent data available, the bank examiner shall provide to the legislature by February 1 of each year a status report regarding such sales, collections, or liquidations.

(5) The guaranty corporation, the State of Hawaii and their officers, agents, directors, and employees, shall have received a full and complete release and discharge, in a manner and form satisfactory to all parties, from or binding upon all the thrift account holders of each company for which such a plan is confirmed, releasing the aforesaid parties from any and all liability with respect to any and all claims directly or indirectly arising out of or in connection with the account holder's thrift account at such member company or the guaranty of such account. Any and all lawsuits pending against any of the aforesaid parties by thrift account holders shall have been dismissed with prejudice.

(6) The member companies shall have paid when due their annual assessments to be levied in 1985, in accordance with sections 408A-9 and 408A-10, Hawaii Revised Statutes.

Pending the receipt of the funds from the issuance and sale of general obligation bonds, the amount required for any such loan shall be advanced from the general fund of the State. Upon the receipt of the proceeds of the general obligation bonds funds, the general fund shall be reimbursed. The issuance of general obligation bonds in accordance with the authorization of this Act and for purposes of making loans to the guaranty corporation is found and determined to be for a public purpose.

SECTION 6. The obligation of members to pay the annual assessments required under sections 408A-9 and 408A-10, Hawaii Revised Statutes, shall permanently terminate if the bank examiner determines that the conditions have been met for making the loans described in Section 5. The guaranty corporation or any member of the guaranty corporation may apply to the bank examiner for a determination that such conditions have been met and for an order terminating liability for assessment, at any time. The bank examiner shall make an order terminating the assessment or denying such application

within thirty days. The guaranty corporation or any member deeming itself aggrieved by the order of the bank examiner under this section, may apply to the Circuit Court of the First Circuit for an order requiring the bank examiner to terminate the member's obligation to pay assessments if the conditions set forth in Section 5 have been met. The court, after citing the bank examiner to show cause why such order shall not be issued, and after a hearing and a determination of whether the conditions set forth in Section 5 have been met, may dismiss such application, order the bank examiner to issue an order terminating assessment liability, or make such further order as may be just. If the bank examiner enters an order terminating the assessment liability of the members, whether voluntarily or pursuant to court order, the termination shall be effective as of the earlier of the date of the application by the guaranty corporation or a member, as the case may be, or the date of the bank examiner's order. Any levy of assessment made after the effective date shall be rendered void, and any amounts paid on account of the levy shall be returned to the paying member.

SECTION 7. The assets of the guaranty corporation, including assets of Manoa Finance, Great Hawaiian, and Commercial Finance, if Commercial Finance participates in a plan of reorganization pursuant to Section 5, shall be available, after satisfaction of the respective liens of the State and the member companies provided pursuant to Section 5, for repayment of the loans made by the State to the guaranty corporation in the years 1977 to 1983, which shall not be discharged by this Act; provided that assets of the guaranty corporation may be used to pay the full guaranteed amount to the account holders of Commercial Finance under sections 408A-9 and 408A-14, Hawaii Revised Statutes, if Commercial Finance does not participate in a plan of reorganization pursuant to Section 5.

SECTION 8. Any loan made by any member company of the guaranty corporation to the guaranty corporation specifically for the plan of reorganization or liquidation described in

Section 5 shall be deemed to constitute a loan complying with the requirements of sections 408-14.5, 408-14.6, and 408-14.7, Hawaii Revised Statutes, or any other provision of state law relating to limitations or requirements on loans by industrial loan companies.

SECTION 9. Statutory material to be replaced is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

APPROVED this 3rd day of June 1985

GOVERNOR OF THE STATE OF HAWAII

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re	)
	)
MANOA FINANCE COMPANY, INC., a Hawaii Corporation,	)
	)
Debtor.	)
	)
	)
	)
Case No. 83-00065 (Chapter 11)	)
	)
PLAN OF REORGANIZATION (INCLUDING DISCLOSURE) PROPOSED BY CHARLES R. KLENSKE, CHAPTER 11 TRUSTEE	)

PLAN OF REORGANIZATION
(INCLUDING DISCLOSURE STATEMENT) PROPOSED
BY CHARLES R. KLENSKE, CHAPTER 11 TRUSTEE

Charles R. Klenske, Chapter 11 Trustee of Manoa Finance Company, Inc., a Hawaii corporation, debtor, hereby proposes the following Plan of Reorganization pursuant to Chapter 11 of title 11 of the United States Code. Pursuant to an order of the United States District Court for the District of Hawaii entered August 27, 1985, this Plan also includes information concerning the Plan. THE TRUSTEE IS NOT REQUESTING A VOTE BY CREDITORS TO ACCEPT OR REJECT THIS PLAN, BECAUSE THE PLAN CONTEMPLATES THE PAYMENT IN FULL OF ALL CLAIMS OF MFC'S DEPOSITORS AND UNSECURED CREDITORS.

Exhibit - 11

ARTICLE I

GENERAL PROVISIONS

A. Definitions

For purpose of this Plan, the following terms have the meanings hereinafter set forth:

A. 1 "Act 187" means Act 187, Session Laws of Hawaii 1985, signed by the Governor of the State of Hawaii on June 3, 1985.

A. 2 "Advance Payment Program" means the program whereby TGC has advanced funds to MFC for advance payments to the holders of Depositor Claims of a portion of the obligation of MFC to the holders of such Depositor Claims.

A. 3 "Allowed Claim" means a claim as defined in Code § 101(4) less any distribution thereon by the Trustee in this case (a) with respect to which a proof of claim has been filed with the Court within the applicable period of time fixed either by the Court or the Rules of Bankruptcy Procedure, or (b) scheduled in the list of creditors prepared and filed with the Court by MFC, as amended and supplemented, and not listed as disputed, contingent or unliquidated as to amount, in either case as to which no objection to allowance thereof has been interposed within the applicable period of limitations fixed in the Plan or the Order of Confirmation, or as to which any such objection has been determined by an order or judgment which has become final.

A. 4 "Allowed Interest" means an Interest in MFC which is either (1) not disputed by the trustee or (2) allowed by the Court.

A. 5 "Allowed Secured Claim" means an Allowed Claim secured by a lien, security interest or other charge against property in which the estate of MFC has an interest.

A. 6 "Allowed Unsecured Claim" means an Allowed Claim which is not secured by a lien, security interest or other charge against property of MFC.

A. 7 "Bankruptcy Code" or "Code" means title 11 of the United States Code, as enacted and effective on February 10, 1983.

A. 8 "Closing Date" shall be a date, within 90 days of confirmation of the closing of the sale of assets of the Estate to TGC provided for in Article 4.3 hereof.

A. 9 "Confirmation" means the entry of an order of the Court confirming this Plan.

A. 10 "Court" means the United States District Court for the District of Hawaii, in which the Chapter 11 case of MFC is pending or such other Court of competent jurisdiction as is exercising jurisdiction over this bankruptcy case at the time of Confirmation.

A. 11 "Depositor Claims" means all unsecured claims against MFC arising from the issuance by MFC of "thrift accounts", as defined in Section 408A-3(e) of the Hawaii Revised Statutes, including interest accrued on such claims through the petition date (February 10, 1983), net of (a) amounts already paid and hereafter paid under the Advance Payment Program or otherwise by the Trustee, (b) interest accrued on amount due to the estate as preferences from January 10, 1984 at the rate of 10% per annum, and (c) amounts owing from depositors to MFC on account of principal and accrued interest on prepetition loans. Depositor Claims shall include the claims of former holders of MFC thrift accounts who have paid to the Trustee amounts received by them as preferences from MFC.

A. 12 "Effective Date" means the Closing Date, provided, however, that if the order of confirmation or consummation of this Plan is stayed upon motion pending appeal then the Effective Date shall be the date of the final order vacating such stay.

A. 13 "Estate" means the estate of MFC created in this reorganization case by Bankruptcy Code § 541.

A. 14 "Interest" means the currently issued and outstanding common and preferred stock of MFC.

A. 15 "MFC" means the Manoa Finance Company, Inc., a corporation organized under the laws of the State of Hawaii, and the debtor in this bankruptcy case.

A. 16 "MFC Cash" means any cash or cash equivalent which is any "Excluded Assets" as defined in the TGC Purchase Agreement, including but not limited to (i) all MFC cash held by the Trustee on May 31, 1985 amounting to approximately $3.3 million and (ii) all money generated by the operations of the Estate of MFC and interest income received by the Estate of MFC from May 31, 1985 to the Closing Date.

A. 17 "Order of Confirmation" means the order entered by the Court confirming this Plan in accordance with the pro-

visions of Chapter 11 of the Bankruptcy Code.

A. 18 "Plan" means this Chapter 11 plan of reorganization of MFC, as amended or modified.

A. 19 "State Fund" means a fund consisting of $8,000,000 appropriated by the State of Hawaii pursuant to Act 187 and loaned to TGC for purposes of this Plan.

A.20 "TGC" means Thrift Guaranty Corporation of Hawaii, a corporation established pursuant to Section 408A-4 of the Hawaii Revised Statutes.

A.21 "TGC Claim" means (a) all claims of TGC against MFC or holders of Depositor Claims under the Advance Payment Program, and (b) any and all claims of any nature, whether legal or equitable, liquidated or unliquidated, contingent, or otherwise, against MFC, MFC's Estate, the Trustee, and any present or former officers, directors, agents, servants, attorneys, of MFC.

A.22 "TGC Cash" means money deposited in the Suspense Account as defined in the TGC Purchase Agreement.

A.23 "TGC Fund" means a fund consisting of $19.5 million loaned to TGC by its members for purposes of this Plan.

A.24 "TGC Purchase Agreement" means the "Agreement of Purchase and Sale Pursuant to Plan of Reorganization" dated August 16, 1985, a copy of which is attached hereto as Exhibit A.

A.25 "TGC Sale Proceeds" means the State Fund and the TGC Fund.

A.26 "Trustee" means Charles R. Klenske, Chapter 11 Trustee of MFC.

B. Treatment of Unclassified Claims

The holders of Allowed Claims against the Estate of MFC, which Allowed Claims are entitled to priority under § 507(a)(1) of the Bankruptcy Code (administrative claims), including entities entitled to payment under § 503 of the Bankruptcy Code, shall receive on account of such claims cash in the amount of such claims as soon as practicable after the Effective Date. Notwithstanding the foregoing, professionals employed at the expense of the Estate and entities who may be entitled to an allowance of fees and expenses from this Estate pursuant to § 503(b)(2) through (6) of the Bankruptcy Code shall be paid in cash as soon as practicable after the entry of an order by the Court pursuant to § 330 or § 503(b)(2) through (6) of the Bankruptcy Code approving an allowance of compensation or reimbursement of expenses in favor of such entities.

C. Means of Execution

C.1 Vesting. From Confirmation, property of the Estate of MFC shall vest in the Estate, free and clear of all claims or liens, except as provided in this Plan or the Order of Confirmation.

C.2 Dissolution. Following the Effective Date, the Trustee shall take such steps under applicable state law as are necessary to dissolve MFC.

C.3 Securities of MFC. As of the Effective Date, the outstanding common and preferred stock of MFC shall be cancelled.

C.4 Distribution of Consideration.

a. Disbursing Agent. The Trustee shall serve as Disbursing Agent and shall distribute all property to be distributed under this Plan.

b. Disputed Claims.

(i) Withhold. The Disbursing Agent shall withhold from the property to be distributed under this Plan a sufficient amount to be distributed on account of the face amount of liquidated claims that are disputed and that have not become Allowed Claims as of the date of the initial distribution under the Plan. The Court shall determine what amount is sufficient to withhold as to any unliquidated claims.

(ii) Distribution. The property withheld, including the allocable portion of the net return yielded from investment of the cash withheld, shall be distributed on account of such disputed claims as such claims are allowed by a final order. Any property remaining after all disputes over claims have been determined and all administrative and other claims have been paid in full shall be returned to TGC.

C.5 Executory Contracts. To the best knowledge of the Trustee, there are no executory contracts or unexpired leases of the estate to be dealt with under this Plan. To the extent that there are any executory contracts outstanding, they shall be assumed and assigned to TGC. All cure payments which may be required by Bankruptcy Code § 365(b)(1) shall be made on the Closing Date or as soon thereafter as practicable.

C.6 Retention of Claims. All claims of the Estate for recovery of preferences against holders of deposit accounts issued by MFC are waived by the Estate as of the Effective Date except for prejudgment interest thereon. Any other claim

or cause of action belonging to MFC shall be retained by the Trustee upon Confirmation, and the Trustee shall have the authority to prosecute, defend, settle, transfer or compromise any such claim or cause of action in the name of the Estate.

C.7 Post-Confirmation Jurisdiction. After Confirmation, the Court shall retain jurisdiction for such purposes as are legally permissible and necessary to effectuate this Plan and the entry of any order in aid of consummation of this Plan, including, but not limited to, the following:

(i) The classication of any claim and the reexamination of claims which have been allowed as of the Effective date;

(ii) Hearing and determining any objection made by the Trustee to any claim (including claims arising from the rejection of any executory contract) or Interest;

(iii) Determination of all questions and disputes regarding title to the assets of the Estate of MFC;

(iv) The correction of any defect, the curing of any omission, or the reconciliation of any inconsistency in this Plan or the Order of Confirmation as may be necessary to carry out the purposes and intent of this Plan;

(v) The modification of this Plan after confirmation pursuant to the Bankruptcy Rules, Bankruptcy Code § 1127, and the rules of the Bankruptcy Court;

(vi) Enforcement and interpretation of the terms and conditions of this Plan and the TGC Purchase Agreement;

(vii) Entry of any Order, including injunctions, necessary to enforce the title, rights and powers of the Disbursing Agent and to impose such limitations, restrictions, terms and conditions of such title, rights and powers as this Court may deem necessary to protect the Disbursing Agent from actions taken by the holders of claims arising before the petition date;

(viii) To hear and determine any adversary proceedings brought under 11 U.S.C. §§ 542, 543, 547 or 548;

(ix) To make the allowance of fees to all professionals for service in this case in accordance with the Bankruptcy Code; and

(x) Entry of an Order concluding and terminating this case in a final decree in accordance with Bankruptcy Rule 3022.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS IN MFC

Claims against the Estate of MFC shall be classified as follows for purposes of this Plan:

Class 1: Class 1 consists of all Allowed Unsecured Claims of the kind described in Bankruptcy Code Section 507(a)(3), (6) and (7).

Class 2: Class 2 consists of all Allowed Depositor and Allowed Unsecured Claims.

Class 3: Class 3 consists of all Allowed Secured Claims.

Class 4: Class 4 consists of all Allowed Interests in MFC under MFC's common stock.

Class 5: Class 5 consists of all Allowed Interests in MFC under MFC's preferred stock.

Class 6: Class 6 consists of all claims of affiliates of MFC as they are defined in Code § 101(2).

Class 7: Class 7 consists of the TGC Claim.

ARTICLE III

TREATMENT OF CLAIMS AGAINST AND INTERESTS IN MFC

Class 1: As soon as practicable after the Effective Date, the Trustee shall pay to each holder of a claim included in Class 1 cash in the full amount of such claim.

Class 2: On the Closing Date, the Trustee shall pay to each holder of a claim included in Class 2 cash in the full amount of such claim. The State Fund shall be used only to pay the guaranteed portion of Allowed Depositor Claims. Payments to holders of Depositor Claims included in Class 2 shall be made by the Trustee from the State Fund, until the State Fund is exhausted, and thereafter from the MFC Cash and TGC Fund.

Class 3: Holders of claims included in Class 3 shall, upon the Effective Date, be restored to their legal and equitable rights under applicable state law.

Class 4: Holders of Interests in MFC's common stock shall receive nothing under the Plan.

Class 5: Holders of Interests in MFC's preferred stock shall receive nothing by way of this Plan.

Class 6: Claims of Affiliates shall take nothing by way of this Plan.

Class 7: TGC shall waive the TGC Claim in connection with the purchase of certain assets from the Estate provided for in Article 4.3 hereof.

ARTICLE IV

MEANS FOR EXECUTION OF THE PLAN

4.1 Sources of Funding. Payments required to be made by the Trustee under the Plan shall be funded from the MFC Cash (amounting to approximately $3,300,000) and the TGC Sale Proceeds made up of the TGC Fund (amounting to approximately $19,500,000) and the State Fund (amounting to $8,000,000) (plus additions which the Trustee estimates will be at least $1,050,000).

4.2 Uses of Funding. The Trustee shall pay out of the MFC Cash all expenses allowed pursuant to Paragraph 507(a)(1) of the Bankruptcy Code and Allowed Claims included in Class 1. The balance of the MFC Cash shall be applied by the Trustee, together with the TGC Sale Proceeds, to the payment of Class 2 Claims. The Trustee will deduct from the amounts owing to MFC's depositors as of the date of the Chapter 11 petition the following offsets of the Estate against such claims: (a) the amount of payments previously made by TGC to depositors under the Advance Payment Program or otherwise by the Trustee; (b) interest which accrued on all preferences paid by MFC to depositors, computed at the rate of 10% per annum from January 10, 1984, and (c) amounts owed to MFC by depositors on account of principal and accrued interest on prepetition loans by MFC to depositors. On the Closing Date, the Disbursing Agent shall pay the allowed Depositor Claims and allowed Unsecured Claims in full. The Disbursing Agent shall withhold from distribution a sufficient amount to pay disputed claims, and for estimated future administrative cost until such time as the Court resolves all disputed claims. Except as otherwise provided by law, any undisbursed, undistributed or unclaimed funds remaining in the Estate after the payment of all (administrative and other) claims shall become the property of TGC, in consideration of

the payment made by TGC and the waiver by TGC of the TGC Claim, at such time as the Court enters an order closing the MFC Chapter 11 case.

4.3 TGC Asset Purchase. On the date provided therein as the Closing Date, the Trustee and TGC shall conduct a closing with respect to the TGC Purchase Agreement. At the Closing, the Trustee shall convey to TGC all of the Purchased Assets, as defined in the TGC Purchase Agreement. In consideration for these transfers, TGC shall pay to the Estate the sum of $27.5 million in cash on the Closing Date, subject to adjustments to the purchase price as set forth in the TGC Purchase Agreement. All costs and expenses associated with the closing of the sale of assets to TGC, as provided in the TGC Purchase Agreement, shall be paid by TGC. Such costs of closing the TGC Purchase Agreement incurred by MFC shall be reimbursed by TGC upon presentation of written invoices, without the necessity of applications for allowance of professional compensation or further order of the Court. The sale of assets to TGC shall be made as is, where is, without any warranty by the Trustee or Estate as to title to the assets sold or any other matter. The sale of assets to TGC shall be made subject to the liens and encumberances permitted in the TGC Purchase Agreement.

4.4 Release. The Confirmation of this Plan, and the payment to the Trustee of the TGC Fund, the State Fund and other amounts due the Trustee under and upon Closing of the TGC Purchase Agreement, shall operate as and constitute a complete release, discharge, and waiver of any and all claims, of whatever nature, whether legal or equitable, contingent, liquidated or unliquidated, which exist, may exist, have been asserted, or might be asserted, by the holders of Depositor Claims against TGC, and any of its officers, directors, agents, employees or servants; its member institutions or their officers, directors, agents, employees and servants; and the State of Hawaii, and all of its officers, agents, employees, and servants. The effect this release shall be to bar any action which has been commenced, or might hereafter be commenced, against TGC or the State of Hawaii by the holders of Class 2 claims arising from or related to the business or activities of MFC, or the issuance of thrift accounts by MFC.

4.5 Equitable Subordination Action. Confirmation of this Plan and the payment to the Trustee of the TGC Fund,

the State Fund and other amounts due the Trustee under and upon Closing of the TGC Purchase Agreement shall operate as a dismissal with prejudice of the action filed by the Official Creditors' Committee on MFC against TGC.

ARTICLE V

DISCLOSURE INFORMATION

The Trustee submits the following information to MFC's creditors to inform them as to the provisions of the Plan. The Bankruptcy Court, by order dated August 27, 1985, authorized the Trustee to submit the Plan to all parties in interest. The information set forth in this Article, and the accompanying financial statements, is based upon the Trustee's investigation of the affairs of MFC, and is the most accurate information available. The accompanying balance sheets as of December 31, 1983 and December 31, 1984 have been audited by a certified public accountant firm, but, because of limitations on scope of its examination and certain uncertainties, it could and did not express an opinion as to their accuracy. The Trustee is therefore unable to certify that the information provided is without any inaccuracy.

5.1 MFC's Organization and Business. MFC was incorporated as an Industrial Loan Company in 1960. By 1970, MFC's financial statements showed total assets of $26,500,000, and MFC had issued investment certificates to depositors totalling over $16,000,000. From its inception, MFC was controlled and managed by Hirotoshi Yamamoto.

The primary business of MFC was the issuance of investment certificates to the public and the making of secured and unsecured loans to individuals and businesses. MFC financed real estate purchases through agreements of sale, and acquired real estate for development.

In 1972, MFC purchased National Braemar, Inc., a California corporation which owned the Japanese Cultural Center in San Francisco. In the same year, National Braemar acquired another California corporation, Dream Entertainments, Inc., which owns and operates an entertainment complex in the Japanese Cultural Center.

The operations of MFC and its affiliates generated losses of approximately $1 million in 1980 and $3.3 million in 1981. Although MFC reported a profit in 1982 of approximately $350,000, losses in 1983 totalled nearly $8.5 million. In February 1983, Hawaii State banking authorities obtained a court

order appointing TGC to act as receiver of MFC as a result of the failure of MFC to comply with the net capital and other requirements of Hawaii law concerning Industrial Loan Companies. MFC filed a voluntary petition under Chapter 11 of the Bankruptcy Code on the day following the receivership order. MFC operated as a debtor in possession under the Bankruptcy Code, with Charles Klenske as Chief Operating Officer, until June 1983. At that time, the Court appointed Mr. Klenske to act as Chapter 11 Trustee of MFC.

5.2 Current Financial Condition. At the beginning of the Chapter 11 case the approximate claims against MFC were as follows:

(i) secured claims	=	$20.5 million
(ii) Depositor claims	=	45.0 million
(iii) other claims	=	1.1 million
Total		$66.6 million

Total assets were valued at $49.8 million, leaving a shortfall of approximately $16.8 million.

Since his appointment, the Trustee has devoted substantial effort to sale of MFC's real property and other assets in order to generate cash for the payment of depositor and other claims against MFC. Through May 31, 1985, total asset sales amounted to $7,424,113, with gains of $3,009,888 realized on the sales. Secured claims against MFC's assets which are entitled to priority payment have been reduced by almost $20 million since the beginning of the case.

As of June 30, 1985, the balance sheet shows that all claims against MFC amount to approximately $44 million. Balance sheet assets are valued at $33.7 million, leaving a present shortfall of approximately $10.3 million.

Attached as Exhibit B are copies of the audited balance sheets for MFC and its subsidiaries which show the company's assets and liabilities as of December 31, 1983, December 31, 1984, and, on an unaudited basis, June 30, 1985. Although the book value of MFC's assets was approximately $33.7 million as of June 30, 1985, many of MFC's loan and other assets are, in the Trustee's opinion, uncollectable.

For example, the June 30, 1985 balance sheet shows net property and equipment of $22.2 million. However, of this amount $4.3 million represents undeveloped, nonearning property located principally in Waianae and Makaha, Oahu, Molokai, and Lancaster, California. The saleability of these proper-

ties depends largely on future growth, improvement in the real estate market generally and, in some cases, zoning changes. Market demand for many of these properties is presently nil. Property owned by MFC in the Royal Gardens subdivision on the Island of Hawaii has been overrun by lava flows and has a market value of approximately 20 percent of its book value.

5.3 Claims Analysis. The Trustee presently estimates that total depositor claims amount to $29,900,000, and that total unsecured claims not subject to immediate set off amount of $854,000. However, the Trustee intends to dispute approximately $464,000 of those unsecured claims. Current administrative claims amount to approximately $644,000. Secured claims against MFC and its subsidiaries amount to approximately $596,000, but these amounts will not be paid under the Plan. Future expenses of operating MFC's estate through consummation of the Plan may amount to as much as $350,000. The $12.6 million paid to guaranteed depositors under the Advance Payment Program shall be forgiven by TGC in its entirety. TGC shall assert no claim against either the Estate or the guaranteed depositors for those advances.

The total amount of claims against the Estate cannot be ascertained precisely because, among other things: (i) there may be additional claims filed by creditors before the date established by the Court as the last day for filing claims (September 3, 1985); (ii) certain claims against the Estate are the subject of litigation and have not yet been liquidated; and (iii) the amount of future expenses which will be incurred by the Estate for legal, accounting and other services cannot be predicted precisely. However, based on the income projected in Section 4.1 of the Plan the Trustee believes there will be sufficient funds available to pay all Class 1 and Class 2 claims in full.

5.4 Liquidation Analysis. The Trustee believes that the fair market value of the real property shown on the attached balance sheets are not realizable in the short term. The value of MFC's receivables will only be realized as loans due to MFC are paid over their normal time frame. Accordingly, the fair market values of MFC's assets should be substantially discounted to take into account (a) the lengthy holding period necessary to realize the value of the properties and receivables or (b) the decreased values of the assets which would be realized through an immediate sale.

On the basis of the foregoing factors, it is the Trustee's

opinion that the present market value of MFC's assets (aside from cash) is approximately $27.5 million.

The Trustee believes that the Plan presents the best opportunity available for MFC's creditors to obtain prompt payment of their claims. The Trustee's efforts to find a financial institution to merge with MFC and continue its pending business have been unsuccessful. Repayment of up to $10,000.00 of each of the Depositor Claims against MFC is provided for under Hawaii law through TGC. However, TGC has insufficient assets to pay in full all guaranteed Depositor Claims. The only alternative to a bulk sale of MFC's assets (as provided for in this Plan) is the piecemeal sale of MFC's properties, and collection of its receivables. Such a liquidation program would be extremely expensive, since it would entail continuation of MFC's Chapter 11 case and associated administrative costs. Additionally, a piecemeal liquidation program would, after application of appropriate discounting principles, not produce a greater return to MFC's creditors than the proposed Plan. Even if the Trustee were able to realize the fair market values of MFC's assets, there would be insufficient funds available to return any amount of MFC's shareholders. This is because unsecured creditors would be entitled to receive post-petition interest on their claims to the extent assets were available in the Estate to pay such amounts before MFC's shareholders would receive anything in a liquidation.

5.5 Development of this Plan. The Plan is the product of negotiation among the Trustee, TGC and the State of Hawaii and is contingent upon the closing of the TGC Purchase Agreement. That Agreement is incorporated into this Plan as Exhibit A. In the event of a conflict between the Plan and the TGC Purchase Agreement, the terms of the Plan shall govern.

5.6 Agreements with TGC, the Trustee and Related Parties. Following confirmation, the Trustee will be employed by TGC to act as a consultant in connection with the liquidation of the assets sold for an annual fee of $12,000.00. The Trustee's principal assistants, Mr. Ray Almeida and Mr. Cedric Yamamoto, who are presently employed by the Estate, will become employees of TGC at compensation commensurate to that which they now receive. Further, TGC will provide to the Estate, at no cost, office space, computer services and personnel necessary to assist the Trustee in making the distributions to creditors contemplated by this Plan and taking the other

actions necessary to wind up MFC's affairs and the close of the Chapter 11 case.

The law firm of Carlsmith, Wichman, Case, Mukai and Ichiki ("Carlsmith") has represented the Trustee as special counsel in the MFC Chapter 11 case, and as a result is familiar with many of the legal problems associated with MFC's properties. TGC had advised the Trustee that it intends to take advantage of Carlsmith's experience by retaining it to assit TGC in legal matters pertaining to the properties acquired by TGC from the Trustee.

5.7 Effect of Confirmation of the Plan. In the event that the Court confirms this Plan and the other contingencies are met, the Trustee will sell the Purchased Assets (as defined in the TGC Purchase Agreement) to TGC for approximately $27.5 million plus interest; the Trustee will retain the cash in MFC's Estate amounting to approximately $3.3 million, plus additions; and TGC will complete the Advanced Payment Program.

On the Closing Date, the Trustee shall make payments to holders of Allowed Unsecured Claims, which include Depositor Claims. Depositor Claims are defined in Section A.11 of this Plan, and generally consist of the amounts owed to Depositors under their MFC thrift accounts as of the date of the Chapter 11 petition, less (a) amounts already paid to them by MFC, (b) interest on preference payments which is owed to the Estate, and (c) the amount of principal and accrued interest on any loans outstanding from MFC to depositors. SUBJECT TO THESE OFFSETS, THE TRUSTEE WILL PAY ALLOWED DEPOSITOR AND ALL OTHER ALLOWED UNSECURED CLAIMS IN FULL.

The Creditors' Committee of MFC has filed an action to equitably subordinate the claims of TGC. Confirmation of the Plan and payment in full of amounts due to the Trustee under and upon closing of the TGC Purchase Agreement will operate as a dismissal of that action, as well as a complete release and waiver of any claims of MFC and holders of MFC investment certificates against TGC, the State of Hawaii and each of the member institutions of TGC in consideration of the appropriation of the funds necessary to pay depositors in full and fund this Plan. Therefore, the Plan will provide that each creditor and equity security holder, for themselves and for their successors and assigns, will be deemed to have released and forever discharged those entities and individuals from all claims as set

forth in the Plan. The sale of assets and waiver of claims are material terms of the Plan. The Trustee believes that the provisions incorporated into the Plan relating thereto and the provisions regarding the waiver and release of claims are reasonable and appropriate. Moreover, the Trustee believes that even if the Trustee and the creditors brought suit regarding any of the alleged causes of action released under the Plan, if any, judicial resolution of the complex issues involved in these lawsuits would take years and would prevent any significant distributions to creditors.

The Trustee has been advised that if the Plan is confirmed, and the Trustee receives all amounts due under and upon closing of the TGC Purchase Agreement, all holders of Depositors Claims will be bound by the terms of the waivers and releases and may be barred from challenging such releases in any future proceedings.

Even if the Plan is confirmed by the Court, the funding of the Plan is contingent upon closing the TGC Purchase Agreement. In the absence of the transactions with TGC, the Trustee will not have sufficient funds to make the payments to depositors and other creditors contemplated by this Plan. The closing of the TGC Purchase Agreement is dependent on, among other matters:

(a) The willingness of TGC's members thrift institutions to loan TGC the $19.5 million and the State of Hawaii to loan TGC $8.0 million necessary to fund the asset purchase.

(b) The satisfaction of officials of the State of Hawaii that the State and TGC are protected against claims of depositors of MFC and Great Hawaiian Financial Corporation.

(c) The dismissal by Hawaii State courts of certain pending class action litigation brought by depositors of MFC and Great Hawaiian Financial Corporation against the State.

5.8 Confirmation. The Bankruptcy Code contains complex provisions regarding confirmation of reorganization plans. Because the Plan provides for payment in full to all of MFC's unsecured creditors and does not affect secured creditors, their acceptance of the Plan is not required under the Code. Further, Class 4, 5, 6 and 7 claims under the Plan receive nothing, and these classes are deemed to reject the Plan.

Accordingly, the Trustee is not seeking the acceptance of the Plan by any Class, and the Trustee is not distributing ballots for acceptance or rejection of the Plan.

The Court will conduct a hearing with respect to confirmation of the Plan on September 30, 1985 at 1:30 p.m., before the Honorable Samuel King, United States Distric Court Judge, in his Courtroom located at United States Courthouse, Honolulu, Hawaii. Any objections to the Plan must be set forth in writing, served on counsel for the Trustee, and filed with the Court not less than 10 days before the hearing.

HOLDERS OF MFC THRIFT ACCOUNTS AND OTHER UNSECURED CREDITORS NEED DO NOTHING FURTHER TO PARTICIPATE IN DISTRIBUTIONS UNDER THE PLAN IF THEIR CLAIMS ARE NOT DISPUTED.

ARTICLE VI

The Trustee, as proponent of this Plan, hereby requests confirmation of this Plan pursuant to Bankruptcy Code § 1129(b).

DATED: Honolulu, Hawaii, August 27, 1985.

/s/ Charles R. Klenske

CHARLES R. KLENSKE
Trustee

AFFIDAVIT OF SERVICE

The undersigned avers and disposes that three (3) copies each of the foregoing Petitioner's PETITION FOR CERTIORARI have been transmitted by the United States Postal Service, postage prepaid to the following:

THE ATTORNEY GENERAL
State of Hawaii
State Capitol
Honolulu, Hi 96813

Re: Notice of Certification per 28 USC § 2403 (b)

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WARREN PRICE III
State Capitol
Honolulu, HI 96813

Counsel for State of Hawaii

DATED: Honolulu, Hawaii, March 22, 1990

/s/ Hirotoshi Yamamoto
HIROTOSHI YAMAMOTO.
pro se